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UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

KELLIE M. O'HANLON, Plaintiff, v. J.P. MORGAN CHASE BANK, N.A., Defendant.	Case No. CV 15-06640 DDP (PJWx) **ORDER DENYING IN PART AND GRANTING IN PART PLAINTIFF'S MOTION TO STRIKE AFFIRMATIVE DEFENSES** [Dkt. No. 34]

Presently before the Court is pro se Plaintiff Kellie M. O'Hanlon's Motion to Strike Affirmative Defenses 1-3 and 5-10. (Dkt. No. 34.) Defendant opposed the Motion. (Dkt. No. 39.) After considering the parties' submissions, the Court adopts the following Order.

I. BACKGROUND

This dispute arises out of Plaintiff's former employment with Defendant J.P. Morgan Chase Bank, N.A., and Plaintiff's employee credit card. (See Notice of Removal, Dkt. No. 1, Ex. A.) This Court previously held that Plaintiff was not required to arbitrate this dispute. (See Order Denying Defendant's Motion to Compel Arbitration, Dkt. No. 18.) Thereafter, pursuant to the stipulation

of the parties, the Court granted Plaintiff leave to file an amended complaint. (Dkt. No. 25.) Plaintiff filed her First Amended Complaint ("FAC") on November 19, 2015. (Dkt. No. 26.) Defendant filed its Answer on December 3, 2015. (Dkt. No. 27.) Then, on December 24, 2015, Defendant filed an Amended Answer. (Dkt. No. 31.) Plaintiff then filed the instant Motion to Strike on January 11, 2016. (Dkt. No. 34.)

Plaintiff's main contention is that Defendant wrongfully terminated her for disputing the balance on her employee credit card. (FAC ¶¶ 1-3.) She alleges a wrongful termination cause of action based on her raising a Fair Credit Billing Act complaint and then being terminated for "acting improperly with respect to filing a false credit bureau credit card dispute." (Id. ¶¶ 13-17.) She claims that Defendant terminated her in retaliation for her complaint and that the termination prevented her from accepting another internal position with Defendant. (Id. ¶¶ 18-23.)

Further, Plaintiff's FAC alleges violations of the Fair Credit Billing Act, 15 U.S.C. § 1601 et seq., the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g et seq., and the Fair Credit Reporting Act, 15 U.S.C. § 1681, based on Defendant's failure to allow Plaintiff to dispute her alleged credit card billing error. (FAC ¶¶ 24-26.) Plaintiff claims Defendant also violated California Labor Code section 2930[1] based on Defendant's alleged failure to provide Plaintiff with a copy of an investigation report that occurred prior to Plaintiff's termination. (Id. ¶ 28.)

[1] The parties stipulated to dismiss with prejudice Plaintiff's claims under California Labor Code sections 201 and 208. (See Order, Dkt. No. 38.)

Plaintiff also alleges a cause of action for violation of the Credit Card Accountability, Responsibility, and Disclosure Act of 2009, caused by Defendant raising her credit card interest rate from 10.24% to 29.99% in one billing cycle without sufficient notice and warning – and applying that higher rate to backdated purchases. (Id. ¶¶ 29-32.) Lastly, Plaintiff has a cause of action for negligent infliction of emotional distress caused by the termination of her employment. (Id. ¶¶ 33-37.)

Defendant has filed two Answers to the Complaint. (Dkt. Nos. 27, 31.) Under Federal Rule of Civil Procedure 15(a)(1)(A), a party may amend its pleading once as a matter of course within twenty-one days of service. Here, Defendant's Amended Answer was filed twenty-one days after filing the first Answer. According to Defendant, it filed the Amended Answer following a meet and confer with Plaintiff about her proposed Motion to Strike, and the amendment "reduced the number of its affirmative defenses to eleven and re-pled the remaining defenses with more specificity." (Opp'n at 4.)

Defendant's Amended Answer raises eleven affirmative defenses: (1) statutes of limitations; (2) laches; (3) estoppel; (4) waiver; (5) unclean hands; (6) independent or superseding causes; (7) failure to mitigate; (8) Plaintiff caused damage; (9) pre-existing condition; (10) offset; and (11) any additional affirmative defenses raised during discovery. (Am. Answer at 15-20.)

Plaintiff has now filed a Motion to Strike Defendant's first through third and fifth through tenth affirmative defenses.

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II. LEGAL STANDARD

Rule 12(f) of the Federal Rules of Civil Procedure states that the "court may strike from a pleading . . . any redundant, immaterial, impertinent, or scandalous matter." Fed. R. Civ. P. 12(f). Immaterial matter is that which has no bearing on the claims for relief or the defenses being pled. Whittlestone, Inc. v. Handi-Craft Co., 618 F.3d 970, 974 (9th Cir. 2010). Impertinent matter consists of statements that do not pertain, and are not necessary, to the issues in question. Id.

"To strike an affirmative defense, the moving party must convince the court that there are no questions of fact, that any questions of law are clear and not in dispute, and that under no set of circumstances could the defense succeed." S.E.C. v. Sands, 902 F. Supp. 1149, 1165 (C.D. Cal. 1995) (internal quotation omitted). Generally, motions to strike are "disfavored" and "courts are reluctant to determine disputed or substantial questions of law on a motion to strike." Id. at 1165-66; see also Miller v. Fuhu, Inc., No. 2:14-cv-06119-CAS(ASx), 2014 WL 4748299, at *1, (C.D. Cal. Sept. 22, 2014).

Under Rule 12(f), the court has the discretion to strike a pleading or portions thereof. MGA Entm't, Inc. v. Mattel, Inc., 2005 WL 5894689, at *4 (C.D. Cal. 2005). "A motion to strike under Rule 12(f) should be denied unless it can be shown that no evidence in support of the allegation would be admissible, or those issues could have no possible bearing on the issues in the litigation." Gay-Straight Alliance Network v. Visalia Unified Sch. Dist., 262 F. Supp. 2d 1088, 1099 (E.D. Cal. 2001). In considering a motion to strike, the court views the pleadings in the light most favorable

to the non-moving party. See In re 2TheMart.com Secs. Litig., 114 F. Supp. 2d 955, 965 (C.D. Cal. 2000)).

III. ANALYSIS

A. Standard for Pleading Affirmative Defenses

Federal Rule of Civil Procedure 8(c)(1) provides a list of some potential affirmative defenses and states that "[i]n responding to a pleading, a party must affirmatively state any avoidance or affirmative defense." Fed. R. Civ. Pro. 8(c)(1). There is some uncertainty as to whether the pleading standard announced in Twombly and Iqbal apply to pleading defenses. See Gibson Brands, Inc. v. John Hornby Skewes & Co. Ltd., No. CV 14-00609 DDP (SSx), 2014 WL 5419512, at *2, (C.D. Cal. Oct. 23, 2014) ("As a preliminary matter, it is not yet clear in the Ninth Circuit whether the pleading requirements of Ashcroft v. Iqbal and Bell Atlantic Corp. v. Twombly apply to affirmative defenses as well as claims and counterclaims." (internal citations omitted)); see also Perez v. Gordon & Wong Law Grp., P.C., No. 11-CV-03323-LHK, 2012 WL 1029425, at *6-8 (N.D. Cal. Mar. 26, 2012)(discussing the different pleading standards and holding that the same policies for changing the pleading standard for complaints in Twombly and Iqbal apply to pleading affirmative defenses, thus holding the affirmative defenses to that standard).

This Court in Gibson did not specify whether Twombly and Iqbal standards do apply, but noted that "[t]he Court simply seeks to avoid the use of 'boilerplate' defenses: a 'series of conclusory statements asserting the existence of an affirmative defense without stating a reason why that affirmative defense might exist.'" Gibson Brands, No. CV 14-00609 DDP (SSx), 2014 WL

5419512, at *2 (quoting Barnes v. AT&T Pension Ben. Plan – Nonbargained Program, 718 F. Supp. 2d 1167, 1172 (N.D. Cal. 2010)). The Court adheres to the same approach here, and notes that the result is the same for these affirmative defenses under either notice pleading standards or fact pleading standards.

B. Defendant's Affirmative Defenses

Here, Plaintiff seeks to dismiss nine of Defendant's eleven affirmative defenses for lack of sufficient factual basis and/or for failing to state a colorable affirmative defense.

1. Statute of Limitations

This is a specifically enumerated affirmative defense under FRCP 8(c)(1). Plaintiff claims that Defendant does not plead the statutory code section providing the statute of limitations in each of the causes of action against which Defendant raises this defense; this failure prevents Plaintiff from understanding the basis of Defendant's theory of untimeliness. (Mot. Strike at 5-9.) Plaintiff alleges her own sources and computations of the statute of limitations in her Motion. (Id.) Defendant responds that it does sufficiently provide its theory in the Amended Answer and that Plaintiff simply disagrees on the merits of the theory. (Opp'n at 8-10.)

The Court finds that Plaintiff's main issue is with how Defendant calculated the different statutes of limitations, which is a merits issue. Defendant alleged that there were four-year, two-year, or one-year statues of limitations for different causes of action and that they all expired prior to Plaintiff filing the case. (See Am. Answer at 15-16.) However, Defendant did fail to fully set forth the statutes of limitations' legal basis for each

of the causes of action the defense is alleged against. Plaintiff is correct that this is insufficient to prepare Plaintiff to respond to such an argument. Defendant should delineate the causes of actions' statutes of limitations and the facts that give rise to Defendant's theory that such statutes of limitations were not met in this case, such as when the limitation period began running, according to Defendant. Therefore, the Court grants the Motion to Strike this affirmative defense, with leave to amend.

2. Laches

This is a specifically enumerated affirmative defense under FRCP 8(c)(1). Plaintiff claims that insufficient facts are pled to show that Plaintiff was neglectful or not diligent, or that Defendant was prejudiced or disadvantaged in some way by Plaintiff's actions. (Mot. Strike at 9-11.) Plaintiff claims that there had only been a year since she knew the nature of her case before she brought the suit, which shows diligence. (Id.) Defendant argues that its theory of delay is clear in the pleading as to all causes of action: Defendant has been prejudiced by Plaintiff's six-year delay and failure to bring Defendant's attention to the interest rate issue until six years later. (Opp'n at 10-11.)

The Court holds that laches is properly pled by Defendant. Defendant's pleading the timeline in the statute of limitations defense sufficiently sets forth the timeline that Defendant takes issue to in this affirmative defense. Defendant also pleads prejudice: "As a result of Plaintiff's unreasonable delay, Defendant suffered prejudice or injuries due to the passage of time and diminution of memories, turnover of employees who might be

potential witnesses, and to the extent that any relevant records were lost or destroyed." (Am. Answer at 16.) The key elements of this affirmative defense are delay and prejudice, and Defendant has pled those elements at a sufficient level to provide Plaintiff with enough information to formulate her case and respond to the affirmative defense. Therefore, the Motion to Strike is denied as to this cause of action.

3. Estoppel

This is a specifically enumerated affirmative defense under FRCP 8(c)(1). Plaintiff argues that the pleading is not clear as to what kind of estoppel defense Defendant is raising, and that no matter what, there are insufficient facts pled to provide Plaintiff with notice of what she is alleged to have done or failed to do to give rise to such a defense. (Mot. Strike at 11-14.) Defendant responds that it was claiming equitable estoppel and did provide sufficient facts. (Opp'n at 11-12.) The Amended Answer states that Plaintiff's third and fourth causes of action are barred by estoppel caused by Plaintiff "conceal[ing] material facts in that she failed to bring her complaints with respect to her credit card to Defendant's attention despite her awareness of the allegedly true facts." (Am. Answer at 17.)

The Court holds that this is an appropriate affirmative defense theory and can be pled by Defendant, but that Defendant must provide more information and facts to support it. The fact that this is an equitable estoppel defense needs to be specifically noted. More and clearer facts must be pled to put forth the theory of this defense. Therefore, the Court grants the Motion to Strike as to this affirmative defense, with leave to amend.

4. Unclean Hands

Unclean hands is a common law affirmative defense. Gibson Brands, No. CV 14-00609 DDP (SSx), 2014 WL 5419512, at *4. Here, Defendant has alleged that it kept polices regarding "employee dishonesty and misconduct as well as relating to credit issued by Defendant." (Am. Answer at 17.) Defendant claims that Plaintiff engaged in misconduct by not abiding by such policies and "misrepresenting facts relating to her credit card." (Id.) Thus, Defendant argues that Plaintiff may have caused her damages by her own bad acts, those acts being disputed by Plaintiff in her Opposition. (See Opp'n at 14-15.) However, unclean hands is not the same as claiming fraud; it means that as an equitable matter, Plaintiff may – if Defendant is correct – have had a part to play in creating the bad situation and employment termination that she complains of in her case-in-chief. Therefore, the Court denies the Motion to Strike as to this affirmative defense.

5. Independent/Superseding Cause

As pled, Defendant has simply stated that "all or portions of Plaintiff's claims are barred, in whole or in part, by the doctrine of independent or superseding causes" and that this bars or reduces any injures Defendant could be responsible for. (Am. Answer at 18.) This could be an affirmative defense, but as currently pled, it does not provide notice nor factual bases for what or who is the independent or superseding cause so that Plaintiff could amend the pleadings and add that party or address the alleged other cause. See G&G Closed Circuit Events, LLC v. Nguyen, No. 10-CV-00168-LHK, 2010 WL 3749284, at *2 (N.D. Cal. 2010). Therefore, Plaintiff's

Motion to Strike is granted as to this affirmative defense, with leave to amend.

6. Failure to Mitigate

Failure to mitigate damages is a common affirmative defense. See, e.g., Gibson Brands, No. CV 14-00609 DDP (SSx), 2014 WL 5419512, *2. Here, Defendant's Amended Answer pleads that Plaintiff failed to mitigate by, among other acts, "failing to secure alternative employment; failing to take reasonable steps to avoid pain, anguish, emotional distress, damage to her reputation, or any situation with her mortgage resulting in Plaintiff allegedly needing to borrow funds or the need to redeem or cash out any retirement accounts, and any payments made for benefits or medical care." (Am. Answer at 18.) These factual allegations and theories of mitigation are sufficient to put Plaintiff on notice of the grounds for Defendant's affirmative defense. Therefore, the Motion to Strike is denied as to this affirmative defense.

7. Plaintiff Caused Damage

This particular affirmative defense has been pled before, see, e.g., Hernandez v. Dutch Goose, Inc., No. C 13-03537 LB, 2013 WL 5781476, at *7 (N.D. Cal. 2013), and it is similar to a theory of contributory negligence, which is an enumerated affirmative defense in Rule 8. Defendant pleads here that Plaintiff's injuries in this case were caused by her own actions, such as "her filing a false credit bureau credit card dispute, her misleading Defendant as to the nature of that dispute and/or the history of charges, payments, and/or delinquencies, and Plaintiff's failure to exercise ordinary care on her own behalf." (Am. Answer at 19.) This is sufficient for Plaintiff to know the facts and theory that Defendant relies on

to support its affirmative defense; thus, the Motion to Strike is denied as to this defense.

8. Pre-Existing Condition

Defendant makes a claim that to the extent Plaintiff seeks damages for physical, mental, or emotional distress, that Plaintiff's damages should be lessened to reflect any physical, mental, or emotional distress that is a result of a pre-existing condition rather than any conduct by Defendant. (Am. Answer at 19.) As Defendant puts it, such damages would be "the result of pre-existing psychological disorders or alternative concurrent causes and not the result of any act or omission of Defendant." (Id.) This is sufficient to give Plaintiff notice of Defendant's defense theory as to Plaintiff's claim for damages. It need not be stated at a higher level of specificity, particularly as it is a damages defense. Therefore, the Court denies the Motion to Strike as to this affirmative defense.

9. Offset

Defendant claims that any damages Plaintiff may receive as a result of this suit would be offset by sums owed to Defendant. (Id. at 19-20.) Defendant explains, "[t]o the extent that Plaintiff was paid money by Defendant to which she was not legally entitled, and/or was reimbursed for expenses not actually incurred or over-reimbursed for expenses or other monies, Defendant is entitled to an offset against any monies found owing to Plaintiff." The Court agrees with Plaintiff that Defendant has failed to properly allege an offset claim. The information regarding outstanding monetary claims by Defendant against Plaintiff would be known to Defendant and therefore Defendant should plead more facts

to put Plaintiff on notice of what is Defendant's theory of reducing damages here. Therefore, the Motion to Strike this affirmative defense is granted, with leave to amend.

IV. CONCLUSION

For all the reasons stated above, the Court GRANTS in part and DENIES in part Plaintiff's Motion to Strike Affirmative Defenses. Defendant has fourteen days to amend.

IT IS SO ORDERED.

Dated:February 25, 2016

DEAN D. PREGERSON
United States District Judge